IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 428 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T CORPN

Versus

BAVAJI KALAJI THAKORE C/O ST KARAMCHARI MANDAL

Appearance:

1. Special Civil Application No. 428 of 1999

MR HS MUNSHAW for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/05/2002

ORAL JUDGEMENT

#. Heard Mr.H.S.Munshaw, learned advocate appearing on behalf of the petitioner and Mr.J.S.Brambhatt, learned advocate for respondent workman.

#. In the present petition, the petitioner Corporation

has challenged the award passed by the Industrial Tribunal, Ahmedabad in Reference [IT] No.53/93 dated 31st August, 1998, wherein the tribunal has modified the punishment of putting the workman to minimum time scale for period of five years and accordingly imposed punishment of stoppage of two increments with permanent effect. The Tribunal has also directed the Corporation to pay arrears to the respondent workman within 60 days from the date of receipt of the award. This Court has issued RULE and granted interim stay on 4th March, 1999.

#. Learned advcoate Mr.Munshaw on behalf of the petitioner Corporation has submitted that the respondent workman was working as Conductor in Ahmedabad Depot at Ahmedabad Division. That on date 12th April, 1991 the workman while on duty as Conductor on route from Pratapgadh to Ahmedabad which was express bus, his bus was checked at Vithoba by the checking staff, at that time, allegations were made against the respondent workman that he had recovered the fare from six passengers of different groups travelling from Parsola and not issued the tickets of Rs.4/- each to the concerned passengers but having seen the checking staff, the respondent workman had issued tickets of Rs.3/- to the passengers and rest of the tickets have been obtained unpunched from the respondent workman. It was also alleged that the way bill was open and one more allegation was that from one passenger who was travelling from Parsola to Nidola from whom the respondent workman had recovered Rs.2/- but not issued the tickets. Therefore, on the basis of the allegations, chargesheet was served dated 3rd May, 1991 on the respondent workman and after completion of departmental inquiry, the competent authority has imposed punishment by order dated 11th February, 1992 putting the workman to minimum time scale of the cadre for period of five years. Learned advocate Mr.Munshaw on behalf of the petitioner Corporation has also submitted that this being serious misconduct relating to dishonesty and misappropriation, interference by the Tribunal was unwarranted and contrary to the law. Mr.Munshaw, learned advocate has also submitted that the tribunal has not given any cogent reasons in support of its conclusion and further submitted that the tribunal has no powers to interfere with such minor penalty. Mr.Munshaw, learned advocate also submits that in such case of dishonesty and misappropriation, normally punishment of dismissal is considered to be just and proper punishment as held by the Apex Court. It is also case of the petitioner that the petitioner Corporation has taken very liberal view in the present matter instead of dismissing the workman and

therefore, interference by the tribunal is contrary to settled position of law.

#. Learned advocate Mr.J.S.Brambhatt on behalf of the respondent workman has submitted that the tribunal has considered the merits of the matter and come to the conclusion that Clause 12[a] & [b] not found to have proved on the basis of the evidence led in the departmental inquiry. He also submits that these two sub clauses referred above are relating to dishonesty and misappropriation misconduct as per the Rules of the Corporation. Therefore, the tribunal has considered this aspect and also considering the actual effect of the punishment which in fact causes huge financial loss to the respondent workman, the tribunal has rightly modified the punishment and the tribunal has rightly given cogent reasons in support of its conclusion and therefore, no interference of this Court is called in the matter.

#. I have considered submissions of the learned advocates for the parties. The respondent workman has raised the industrial dispute which was referred for adjudication on 1-3-1993 challenging punishment order dated 11th February, 1992 and in support of which, the statement of claim was filed by the respondent workman at Exh.7 and written statement was filed by the petitioner Corporation at Exh.13. Thereafter, the petitioner Corporation has produced documents before the Tribunal but thereafter both the parties have not led any evidence and matter was heard by the tribunal on merits. After considering the submissions made by the parties before the tribunal, the tribunal has decided the merits of the matter. The tribunal has assigned reasons in support of the award in para-12 of the award and after examining the merits and the evidence led in the departmental inquiry, come the conclusion that at the time when the bus was checked, in all there were 86 passengers found in the bus and the way bill was also found open. Ultimately, the tribunal has come to the conclusion that in view of the oral evidence led in the departmental inquiry and after analyzing the oral evidence led in the departmental inquiry, the tribunal has come to the conclusion that clause 7[a] found proved partly meaning thereby, the misconduct of not issuing the tickets without reasonable cause. Thus, misconduct as provided under Clause 7[a] was partly proved but the misconduct as defined under Clause 12[a] [b] which relating to theft, dishonesty and misappropriation was not stand proved against the respondent workman for the incident in question. Therefore, the tribunal has come to the conclusion that considering the explanation given by the respondent

workman, this incident can be said to be bonafide mistake on the part of the respondent workman and therefore, punishment imposed by the competent authority on 11th February, 1992 is shockingly unreasonable and disproportionate. Thus, the tribunal has exercised the discretionary powers while coming to the conclusion that the punishment imposed by the authority lowering down the respondent workman to minimum time scale of the cadre for a period of five years should be replaced by punishment of stoppage of two increments with permanent effect, which according to my opinion, just and proper in the facts and circumstances of the case. This Court has perused the entire award passed by the tribunal. The tribunal has discussed at length the evidence and rightly reappreciated the evidence led in the departmental inquiry while coming to its conclusion. Therefore, the tribunal has not committed any error while passing the award impugned in this petition. There is no jurisdictional error nor any procedural irregularity committed by the tribunal which found apparently from the face of record and therefore, interference of this Court is not at all called for while exercising the powers under Article 226 and 227 of the Constitution. Hence, there is no substance in this petition, which requires rejection and same is rejected accordingly.

Accordingly, this petition is rejected. Rule discharged. Ad-interim relief, if any, granted by this Court stands vacated. No order as to costs.

Date : 7-5-2002 [H.K.Rathod, J.]

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